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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

KILGORE v. BARR.

Sept. 9, 1912.

[75 S. E. 762.]

Bankruptcy (§ 228*)—Preferences—Jurisdiction by Consent.—The bankruptcy court had jurisdiction by consent, so that its determination was conclusive, where at a meeting before the referee in bankruptcy of the creditor of D., the question of whether C.'s note to D. passed to R. by D.'s assignment, was raised, and to such proceeding C. and R. were made parties on their own motion, and after a hearing, the referee held it was a voidable preference, and did not pass, and C. and R. appealed to the district court on the merits only.

[Ed. Note.—For other cases, see Bankruptcy, Cent. Dig. § 387; Dec. Dig. § 228.*]

Error to Circuit Court, Wise County.

Action by E. L. Barr, trustee in bankruptcy, against Charles T. Kilgore. Judgment for plaintiff. Defendant brings error. Affirmed.

E. M. & E. H. Fulton, for plaintiff in error.

Vicars & Peery, for defendant in error.

VIRGINIA COAL & IRON CO. v. ISONN et al.

Sept. 9, 1912.

[75 S. E. 782.]

1. Ejectment (§ 15*)—Common Source of Title.—Where, in ejectment, both parties claimed under a common source of title, neither party need trace his title beyond the common source, though he was not their immediate grantor.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. §§ 59-62; Dec. Dig. § 15.*]

2. Boundaries (§ 41*)—Calls in Deeds—Evidence—Instructions.—Where, in ejectment, the issue involved the location of a line pursuant to an ambiguous call in a deed, and the evidence failed to show any natural object or well-defined lines called for in the title papers tending to show the true location of the disputed line, but the line

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

called for might be run in different places, a charge that, if the call in the deed could be located from the evidence, the jury must do so and uphold the deed, etc., was erroneous and misleading, necessitating the setting aside of a verdict sustainable only on the hypothesis that the evidence proved natural objects or well-defined lines called for in the deed.

[Ed. Note.—For other cases, see *Boundaries*, Cent. Dig. §§ 205-207; Dec. Dig. § 41.*]

3. Boundaries (§ 9*)—Deeds—Calls.—While the call for quantity in a deed will not control where muniments of courses and distances are called for by which the land can be identified, yet where no known or established boundaries are named as describing the land, and the deed contains no other description sufficiently certain to define the land, the quantity may be used to ascertain the premises.

[Ed. Note.—For other cases, see *Boundaries*, Cent. Dig. §§ 77-89; Dec. Dig. § 9.*]

4. Evidence (§ 508*)—Opinion Evidence—Expert Witnesses.—A surveyor may testify as an expert on matters with which he is peculiarly acquainted; but he cannot testify as to conclusions of fact or of law.

[Ed. Note.—For other cases, see *Evidence*, Cent. Dig. § 2311; Dec. Dig. § 508.*]

5. Witnesses (§ 379*)—Impeachment—Contradictory Statements.—In ejectment involving the location of a boundary line, a witness for plaintiff was properly impeached by requiring him to testify if, in a conversation with a third person, he had not stated that defendant was entitled to the property sued for.

[Ed. Note.—For other cases, see *Witnesses*, Cent. Dig. §§ 1209, 1220-1222, 1247-1256; Dec. Dig. § 379.*]

6. Boundaries (§ 36*)—Surveys—Evidence—Admissibility.—A private survey, though admissible as evidence of boundary between the parties to it or those claiming under them, is inadmissible as independent evidence against strangers.

[Ed. Note.—For other cases, see *Boundaries*, Cent. Dig. §§ 160-162, 164, 166-176; Dec. Dig. § 36.*]

Error to Circuit Court, Wise County.

Action by the Virginia Coal & Iron Company against one Isonn and others. There was a judgment for defendants, and plaintiff brings error. Reversed, and new trial ordered.

R. A. Ayers, E. M. & E. H. Fulton, and Bullitt & Chalkley, for plaintiff in error.

Vicars & Peery, for defendants in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.